

Exhibit 11

**(Exhibit 11 is a video of Academic
Freedom Solutions conference
filed and served separately)**

Exhibit 11a

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UT vs. LOWERY
ACADEMIC FREEDOM SOLUTIONS

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1 (Recording begins.)

2 MODERATOR: As John Cochrane, this morning in
3 his opening remarks said, this conference is not just focusing
4 on trying to understand and analyze the state of academic
5 freedom, but also to think about, sort of, practical and
6 actionable solutions on how to protect or how to, like, gain
7 back some academic freedom in our universities. So this is the
8 focus of this panel, to think about some -- some actionable
9 solutions.

10 And we'll go in the following order in terms of
11 opening remarks. Richard will go first, setting sort of the
12 stage a little bit, sharing some of his experiences. Dorian
13 will go next, talking about the rules of engagement. Peter
14 then will speak about how to engage the other side when
15 necessary, and John will focus on how to enforce.

16 So Richard, please get started.

17 MR. LOWERY: So I apologize. Slight change of
18 plans. Since we switched to live streaming, I had -- I know a
19 lot about public universities, I know a lot about efforts to
20 reform public universities, but I can't talk about that. And I
21 can't talk about why I can't talk about that. So you can do
22 whatever inferences you want there or we can have private
23 conversations, but in the course of working on that issue, I've
24 sort of thought a lot about the distinction between private
25 universities and public universities and where maybe

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1 private univer- -- how private universities could or could not
2 get back to being something socially useful.

3 So I think it might be safe for me to make some
4 comments about private universities, it might not. We'll
5 probably find out. So here goes. So private universities, I
6 think there are three things that need to be understood.
7 Again, I'm taking Cochrane -- John's idea, like, there's a
8 problem, we need to fix it. I'm not going to really go start
9 with that, but what do we need to understand about private
10 universities to figure out how to fix them.

11 And I think there are three things that are
12 worth focusing on, and I'm an economist and I'm actually a
13 financial economist, so this is kind of informed by that.
14 Three things we need to understand, our governance, capital
15 structure and what the product really is. What's the product
16 market we're talking about? So governance in private
17 universities is really strange.

18 So who runs a private university? Some board.
19 Who's on that board? A bunch of -- and I'm going to focus on
20 elite-type private universities, because that's all anyone
21 cares about really. So the boards, they're a bunch of people
22 who don't know anything about universities. They're the only
23 ones who have any actual authority to change anything if they
24 wanted to. What do they mostly do? I think they're mostly,
25 you know, high-power business types. I think that's right.

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1 And, you know, what are their incentives to -- to change things
2 at universities?

3 Well, they have to do a lot of this kind of woke
4 virtue signaling. They can either do that at their firms where
5 it costs them money, or they can do it at the university where
6 it doesn't cost them anything and they can just make other
7 peoples' lives miserable. So what's the chances that
8 they're -- that your board is actually going to step up and do
9 anything? It's basically zero, and there's huge, you know,
10 problems -- you know, faculty have a lot of independence, so
11 they would need to really ride hard. That's not going to work.

12 The capital structure, that means, like,
13 financial positioning, you know, how do the universities fund
14 themselves, you know, what happens to a firm if it's just
15 awful? It loses money and it goes out of business. We don't
16 see a lot of firms that pile up billions and billions of
17 dollars more of resources that they don't need just so they can
18 hang around if they start to be terrible.

19 That's exactly what a university capital
20 structure looks like. No matter how awful these places get,
21 they still have tens of billions of extra dollars that they
22 don't need to make sure they don't go away. So the capital
23 structure is insane. You would never structure a firm with
24 this many agency problems, this mu- -- much difficulty in
25 managing that way. They need to be subject to some sort of

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1 bankruptcy. We're not there. We don't have a capital
2 structure that could bring about reform. So that's, you know,
3 two strikes already.

4 So what could we do -- and I think -- thinking
5 about what we could do, you have to think about what this
6 product is. What are elite universities doing? What is
7 Stanford doing? And as far as I can tell, they're sort of
8 providing a coordination device where they designate certain
9 people as in charge of things. You go to Harvard, you go to
10 Stanford, you -- people have to listen to you and do what --
11 what you say.

12 This used to be a process where there was some
13 filtering and you would hire -- you know, they -- they would
14 check and see who's good and then maybe give you some training,
15 but that's not true anymore. The -- the selection -- maybe
16 it's still an IQ a little bit, but the selection of people and
17 the way they're trained is awful. And if you look at some of
18 the things that come out of -- you know, there's an example
19 that I'd love to go into, but I better not.

20 But some of the, sort of, attitudes of people
21 who raise to the top at elite universities, you -- you could
22 never get there if you had a sensible, like, free environment.
23 People would be told, no, that's a terrible thing to think, how
24 dare you think that. Instead, these people rise to the top and
25 they get put in charge of important things.

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1 So what the university is selling is prestige.
2 And by "prestige," I mean, you know, a designation that you're
3 the person who gets listened to in the future.

4 So a quick aside, you might think universities
5 create science, and that's an actual valuable product, but if
6 you think -- if you really think about the capital structure as
7 a sort of science project, money goes in, ideas come out,
8 that's great. But what is the university doing in that
9 process? Mostly, they're just taxing it. You know, federal
10 grants come in, and the university lets the scientists have
11 half of that and uses the other half for things.

12 So if we just move the science completely off,
13 that would be better. And it's not like we're getting a great
14 environment for science at universities. We already had that
15 panel, like, this is the worst place to do it. Go find a new
16 spot, get the federal grants and do it somewhere else and
17 that's clearly better. So that -- I don't think that's for the
18 product. All we're selling is this random designation.

19 So what do we do? We can't -- you know, we have
20 no capital structure approach. We -- we -- they're not going
21 to go bankrupt. The boards are useless, they won't fix
22 anything. How do we do anything productive here? Well, you
23 know -- sorry, I should say -- and they're really -- like, the
24 university, they're really not -- like, the moment the
25 universities needed to stand up, there's, like, discourse and

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1 argument and all of that. In the pandemic, I'd say they --
2 they completely reversed, like, they'd just crack down on any,
3 like, independent thought and just went straight to enforcing
4 some Zyte guy's orthodoxy. So we really need to do something
5 about that.

6 So I think there is a solution and I think the
7 solution is something along the lines of tobacco company
8 treatment. So how do we get -- you know, what happened to the
9 tobacco companies? People turned on them. They were doing
10 things that people didn't like, and, you know, it used to be it
11 would be great to go work from Philip Morris. Now it would be
12 embarrassing.

13 So we could do that. If we really put a lot of
14 effort into showing what actually goes on in universities, we
15 could get the brand to look like Philip Morris. And now Philip
16 Morris is fine because they're selling something that's
17 actually enjoyable. I mean, it's not great but there's a
18 reason people like nicotine.

19 Universities are only selling their reputation.
20 So if people really -- like, if all we did was put all our
21 effort into showing people what's really happening here,
22 eventually, that would kind of go away and they wouldn't be in
23 charge of who's running things anymore, and we could come up
24 with something else. I don't know what that looks like, but
25 it's not going to be worse. So that's, I think, the only

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1 practical solution I can come up with for private universities.

2 MODERATOR: Thank you.

3 MR. ABBOT: Okay. Well, I'm going to -- I'm
4 going to talk about some sort of in the trenches, kind of,
5 solutions that maybe could be useful. So first, I want to go
6 through -- I want to talk about what the objective should be,
7 what the strengths our side has and formulate some plans. So I
8 agree with Jerry, Jerry Coyne, what he said this morning, that
9 the objective should be Chicago principle, Kalven Report and
10 Shils report.

11 So Chicago principles say free expression on
12 campus, even if it offends someone, and put in place
13 punishments for disrupting other people's speech. Kalven
14 Report says the institution can never take a official corporate
15 position on any social and political issue at the risk of -- of
16 suppressing the speech of some members of the institution who
17 disagree. And the Shils re- -- report says that academic
18 appointments can only be made on the basis of academic
19 qualifications and nothing else. And the Shils report is
20 actually what's keeping DI statements out of University of
21 Chicago hiring. So it has really important inf- -- and
22 immediate implications.

23 Okay. And the other thing is enforcement. So
24 you can't just have these principles and say, Oh, we've got
25 them, you know, we're happy. You have to actually do something

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1 about them. And I'm going to talk a little bit about how we've
2 been trying to make sure our administration enforces things at
3 UChicago.

4 So, now the strengths. Okay. The number one
5 strength, I think, is public support. So the woke stuff is
6 super unpopular and the vast majority of people of all races
7 think that evaluations for university admissions and hiring
8 should be done on the basis of merit, for example. They think
9 that, oh, almost -- you know, I think it's about three-quarters
10 of the public thinks that universities should have freedom of
11 expression in place. So that's a big -- that's a big strength.

12 The second is alumni. So I wore this pin from
13 the MIT Free Speech Alliance. Bill Frezza, who spoke earlier,
14 is -- is either the head of that or one of the big people on
15 it. And so that's a really important group. Carl Neuss is
16 here sitting in the front for Cornell Free Speech. And so
17 there are these alumni networks that have sprung up, people who
18 really care about their institution that they came from, and
19 they want to work with faculty and try to improve the
20 situation. I think that's a big strength.

21 And fundraising. So University of Austin
22 launched. A lot of people on Twitter who, you know, said that
23 it was really bad and whatever. But there is the \$150 million
24 almost right away. So it doesn't really matter if people say
25 bad things on Twitter if you can go out and -- and raise a

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1 bunch of money and do what you want to do.

2 I think the silent majority of students and
3 faculty is on our side. They're -- they have been very silent.
4 But, for example, after I started getting [sic] -- getting in
5 trouble, I was immediately elected onto the council of the
6 university senate. And so it -- as long as it's an anonymous
7 vote, people -- you will sometimes win on those things. Not
8 all the time, but sometimes.

9 And then the last thing is sanity. So if -- if
10 you look at what the woke people say, it's -- it's insane most
11 of the time. And I think the presidents of u- -- of the
12 universities know that, and they -- they have to sort of kowtow
13 to them sometimes, but it is a strength to be able to go in and
14 say something sane to the president and -- and make a rational
15 argument. So I think that's a strength.

16 Okay. Now, I'm going to talk about three plans.
17 Three types of plans. The first is working within
18 institutions, the second is starting new institutions, and the
19 third is involving government, which I think will be the most
20 provocative in this crowd, especially since there's a lot of
21 libertarian types.

22 So first working within institutions. So the
23 woke people work really hard. They -- they know how to grab
24 institutional power and -- and to take things over. And
25 they're a really small percentage of the population. And so

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1 that can be depressing, but it can also be, sort of -- you
2 know, it can make us feel optimistic, because we don't have to
3 be -- you don't have to have 90 percent of the people be
4 willing to be active on academic freedom issues. You just have
5 to have, I don't know, five or ten percent of the faculty
6 willing to be obstinate on it. And that could be enough to get
7 a lot done.

8 But we have to be willing to actually work hard,
9 so many of us -- you know, we're interested in our scientific
10 or other scholarly research, and we're not necessarily
11 interested in going and sitting in a bunch of stupid, you know,
12 council meetings or sitting on committees to decide who's the
13 next dean or whatever. But I think we're going to have to do
14 that because the other side is doing that. And so that's what
15 working within institutions look like -- looks like.

16 So at UChicago, we founded a group called
17 UChicago Free. We have about 50 faculty members who are
18 willing to put their names on our website and publicly say that
19 they support the Kalven Report and the Chicago principles. We
20 have a listserv where we discuss these issues, which has been
21 very useful to me. Rick, in particular, has a huge
22 institutional memory, Rick Shweder, and has shared with us a
23 lot of former speeches he's made and things that have happened
24 in the past that not everybody would know about. And so these
25 sorts of networks can be very useful.

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1 And we've also done practical things. So, for
2 example, we get people elected to the council of the university
3 senate. Some of these things, you just have to show up to win.
4 And so we've got to start showing up. And then the other thing
5 is, we had -- we have this Kalven Report that the university is
6 supposed to be neutral on social and political issues that was
7 respected until 2020, then all of a sudden, it was just not
8 respected.

9 And so the provost sort of set the tone by
10 repeatedly putting out statements about how we're supposed to
11 think about social and political stuff, and then it filtered
12 down and every department chair was like, Well, I guess I gotta
13 do this now, and -- and it just went crazy. And so we had,
14 kind of, a two-year battle to get these statements removed that
15 Jerry was one of the leaders of the fight.

16 And it -- it involved a lot of writing to the
17 president, and eventually we had three meetings with the new
18 president. And finally a process was set up where we can
19 submit an issue to the dean when there's an offending statement
20 put up, and the dean will order the statement down. And if the
21 dean doesn't act, we go to the provost and then we can go to
22 the president. And we've started getting these ta- --
23 statements taken down, and so far we have 100 percent rate.
24 Every statement we've said is a violation has been taken down.
25 And so that -- that took two years of fighting, but we

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1 eventually got it to happen. And so, you know, this stuff can
2 be useful.

3 And in terms of starting new institutions, I
4 mentioned the University of Austin before, and so there's --
5 there's scope for sort of big projects like that. But also,
6 you can do little stuff. And so I founded this Substack, the
7 Heterodox STEM Substack. And we get submissions from faculty
8 and students, sometimes anonymous, sometimes signed, and people
9 can sort of put out what they're thinking and what they're
10 experiencing. I think that's been very useful to the
11 community. And so you can try to just do something yourself,
12 and maybe it works, maybe it doesn't work.

13 And finally, the provocative controversial idea,
14 so some of these things might take more action, more collective
15 action to get desirable results. And so I'm going to propose
16 two potential ideas for discussion. I'm not necessarily
17 advocating for them, but these are ways that the government
18 could get involved that maybe during this conference, we can
19 talk about more.

20 So the first is, we talked about the -- the
21 Chicago Trifecta, the Chicago principles, the Kalven Report and
22 the Shils report. You could tie federal funding to adopting
23 and enforcing these principles in some way, somehow like a
24 Title IX kind of a thing. So that's what I did.

25 And then the second idea, it is a way to enforce

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1 these, is you could -- you could sort of have -- you could
2 enable lawyers to file class action lawsuits if you could prove
3 that a university was not following these. So one thing is,
4 you could tie funding to following them, but you could also
5 sort of say anyone who can -- if you get insider information
6 and you can prove that a university is not actually following
7 these, then you can do a class action lawsuit, and every
8 student who was -- who paid tuition that year gets their
9 tuition refunded or something like that.

10 And so those are two, sort of, ideas. And I
11 know there's a lot of lawyers and people who know more about
12 this kind of stuff in the audience, but maybe there could be
13 some discussion about that if we have time on this panel.

14 MR. ARCIDIACONO: All right. So I'm going to
15 take a little bit different path and talk about what we have
16 agency over. When we're operating in a space where our views
17 sort of don't fit in. And I think can summarize it with, sort
18 of, we'll call the three Cs, that we need to have courage,
19 compassion and community. And I think all three of those are
20 super-central to preserving the academic freedom that we're
21 looking for.

22 If we had courage, you know, some people will
23 think that because I've spoken up on particular things, that
24 I've got courage, and that is so many other things where I
25 haven't spoken up and completely wimped out. You know? And I

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1 think that that's true for probably everybody in this room.

2 And I think it -- it's really hard -- hard to have that. So I
3 think figuring out a way to say, Okay, it's worth it for me
4 to -- to -- to do that.

5 It's going to be a lot easier to do those
6 things, though, if you have compassion. You cannot be seeing
7 the other people as not redeemable. So to me, one of the --
8 the best examples of engaging on ac- -- on what we're looking
9 for is what fair does. And I think in particular, that Daryl
10 Davis symbolizes that incredibly well. The idea that, you
11 know, a black jazz musician can go talk to people in the KKK
12 and get them to turn over their hoods, if -- if he could do
13 that, you know, that's what -- that's what we really need --
14 need to be about.

15 So I think that part of the reason I've been
16 able to survive, given the views that I have, given the
17 research that I've done is because of my relationships with
18 people who disagree with me. And I've got plenty of those
19 people who I love and care about. And I've learned a ton from
20 them. They say that, you know, it's really bad for
21 conservatives, but the reality is, I end up learning a ton
22 because my arguments actually get challenged. And when you
23 don't have those arguments get challenged, you're just
24 intellectually soft, and it doesn't -- you know, I think that's
25 a big barrier.

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1 You know, my kids go to a school that's a
2 classical school, and they have what's called grammar, logic
3 and rhetoric. And I think a lot of times in an environment
4 like this, we're really focused on the logic. But the issue of
5 communicating those ideas in ways that other people can
6 actually hear is huge. You know, I think about Jonathan
7 Haidt's book quite a bit and the -- you know, why is it that
8 people believe what they believe and the ability to describe
9 that?

10 I have faculty members who are warned before
11 they come to -- to join our faculty that I'm a racist. And
12 that sucks, right? I mean, that definitely sucks. But I'm
13 committed to having relationship with these people, and so they
14 know that that's not the case, right? That requires me not
15 just sticking to, you know, dehumanization of the other side,
16 but to put up with -- with being called those things and engage
17 anyway and to love them anyway. And I think if -- if we do
18 that, that's how the battle really turns.

19 I'm not actually -- I disagree with the mockery.
20 You know, I think it can be in good fun; but fundamentally, we
21 need to be having the relationship with those other people.
22 Some of those other people -- there's a set who are not going
23 to want to have any relationship with us. That's fine. But
24 there's enough other people out there that we can engage with
25 where that -- that can work out.

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1 And so then on the last part, which is on the
2 commit -- on the community, you know, that's where it's really
3 important to have each other's backs on these types of things.
4 And that involves, you know, sending the emails to be
5 encouraging when you see people going through those times. I
6 really like -- Joshua Kats has a great article on the culture
7 of the canceled. When you read that ar- -- there's other
8 people out there. And that's what can allow you to have the
9 courage to speak -- to speak out. That's it.

10 MODERATOR: Thank you.

11 MR. ROSE: Okay. Well, I think I'll open my
12 remarks with a disclaimer, which is my focus is fairly narrow.
13 The things that I'm working on are limited to freedom of speech
14 on campus and not the larger governance issues. But the --
15 I've recently published an article that's called Conquering the
16 Climate of Fear. And climate of fear is a -- it hallows back
17 to the language of the blacklist. And I used that
18 intentionally because there's a great deal of fear to speak out
19 freely on campus.

20 And there's two types of fear. The first one is
21 fear of being sanctioned by the university itself in some
22 capacity. And the second, perhaps the more important fear, is
23 the fear of the reaction of your fellow students, usually, or
24 of your colleagues, and the social sanction that comes along
25 with that. I only have a limited amount of time, so I -- but I

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1 think it's more important. I can't talk about the second fear.

2 So I'll talk about the first fear and try to
3 offer practical solutions, which is what this panel is for --
4 for that. All right. With regard to freedom of speech on
5 campus, the problem is not that there isn't commitment from
6 universities to that. Every public university is already
7 committed to freedom of speech because it's bound by the First
8 Amendment.

9 The sense in which its -- the universities are
10 committed to freedom of speech is a sense governed by the First
11 Amendment, which is you must be free to express ideas, and you
12 can't be punished for the content of our speech. The content
13 of the speech is what's protected.

14 Other aspects of speech, like, if you're
15 insulting, if it's fraud, if it's libel, if it's all of these
16 things, if you're speaking on a loud speaker that you're
17 bothering people, that's regulatable. What's protected is the
18 content of your ideas, and if they're offensive, you can't be
19 punished for that. First Amendment protects that.

20 For private universities, it's basically the
21 same. There's, I think, over 100 universities now that have
22 adopted the Chicago principles. The Chicago principles were
23 written by constitutional lawyers to make the restrictions of
24 the First Amendment applicable to the universities if you -- as
25 the university adopts that, they voluntarily apply the same

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1 commitment to themselves.

2 And even universities that haven't exclusively
3 adopted the Chicago principles, if you look at their policy
4 statements, they contain words like "broadest," "untrammelled,"
5 "most extensive," "unfettered." This is the language that they
6 use to describe the commitment of freedom of speech. So
7 universities are committed to freedom of speech. The problem
8 is not the commitment. The problem is that the commitment's
9 not enforced. That's where we should be focusing our
10 attention.

11 All right. Think about it. The purpose of
12 university speech policies is to restrain the actions of the
13 university's administrators, the deans, the provosts, the
14 presidents who enforces the speech policies. The
15 administrators, the deans, the provosts, the presidents. It's
16 not surprising that the enforcement is somewhat lax, right?
17 You put the wrong people in charge.

18 The problem here is -- I teach in the law
19 school. I also teach in the business school. It's --
20 occupationally, I have to learn to look at incentives. So the
21 problem here has a lot to do with incentives. There's no
22 -centive -- incentive for enforcement. I said to someone on
23 the way in that many people who research this have -- who work
24 on this have to go out and research all of the instance- --
25 instances about lack of enforcement in other universities. I

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1 don't. I work at Georgetown University. I just have to go --
2 go down the list of what we've done the last seven years.

3 There's great examples of why it isn't enforced.
4 Instead of wasting time on that, I -- I'll just read you an
5 example. We get campus climate newsletters all of the time
6 from the -- there's an update on inclusion and strengthening
7 our campus climate. We're committed to free speech. We've
8 adopted the Chicago statement, yet we get emails like this.
9 The relevant excerpt is, Many of you may have been made aware
10 about racially-insensitive messages posted anonymously on the
11 new social media app, Flock, which somebody must know what that
12 is. We will be continuing to investigate these incidents. If
13 anyone has any information on these messages, we urge you to
14 report them to the Office of Institutional Diversity, Equity
15 and Inclusion.

16 So it's not just that people have made
17 insensitive comments that are offensive. It's that the
18 university is investigating them and incentivizing everyone
19 else to inform on the people who are saying the wrong thing.
20 That seems fairly antithetical to the commitment made by the
21 Chicago statements which the university has adopted.

22 All right. That's a problem. What's the
23 solution? The solution is to change the incentives. The
24 people who have -- no dean gets rewarded for upholding an
25 abstract commitment. But if there's dissension going on and

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1 students are going to cancel classes and there's a big -- it's
2 a big problem, their job is to keep the school going. They
3 respond to their incentives.

4 In my experience, deans are not bad people,
5 they're not evil people, and they're certainly not ideali- --
6 idealized. Right, they're administrators. They're not
7 idealized. They just have a job to do, and they respond to
8 their incentives, which is to keep the school going. So they
9 have no incentive to uphold the -- the principle. What we can
10 do. I'll give you two practical solutions.

11 The first one is you have to write a particular
12 clause into the speech and expression policy. I'll call it a
13 "safe harbor clause." You get this sentence in the -- the
14 speech policy, and that's step one. Uni- -- the university
15 will summarily dismiss any allegation that an individual or
16 group has violated a policy of the university if it determines
17 the allegation to be based solely on the individual or group's
18 expression of his, her or its religious philosophical literary
19 artistic, political or scientific viewpoints.

20 So you write the explicit commitment into the
21 university's speech and expression policy. Why is that
22 important? If it goes into our faculty handbook, it's now
23 legally binding on the university. In many states, that's the
24 case. In other states, even if it's not definitely legally
25 binding, it can be grounds for a lawsuit. We -- they've now

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1 made a commitment to free speech, not in the abstract, but a
2 real binding commitment that's legally enforceable. That's
3 Step 1.

4 Step 2, this only works if you also have a
5 widespread network of pro bono legal organizations which FIRE
6 is in -- has already created or is in the process of creating
7 people who will represent those that are -- whose speech is
8 suppressed at no cost. Nobody can afford to do it themselves.
9 There's no return. But if you have people who are dedicated to
10 freedom of speech and will bring lawsuits when universities --
11 let's say some -- subject somebody to a four-month
12 investigation because of what he said and make the
13 investigation to punishment, then we have something that will
14 change incentives.

15 At least in my university, university counsel is
16 not in the business of winning lawsuits. University counsel's
17 in the business of preventing lawsuits. And if universities
18 can be sued whenever they violate this particular provision,
19 they investigate people because of speech, it's not going to
20 change the dean's incentives, it's not going to change the
21 provost's incentive. It will change university counsel's
22 incentive, but that is an important incentive to change,
23 because that person will start saying, We have to have
24 different training, we have to have different rules. So that's
25 Step 1.

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1 Another possibly so- -- possible solution, too,
2 which is change the decision-making locus. So you create a
3 prophylactic in this sense. I'm the chair of the grievance
4 committee at Georgetown. We have something called the initial
5 review committee for grievances. You have an initial review
6 committee for accusations of violations of freedom of speech.

7 Before anything is pursued, before there's any
8 kind of investigation, the issue goes to the initial review
9 committee. That committee is made up of people who understand
10 the difference between speech and conduct. They know the legal
11 distinction. They -- they're -- it's good if their lawyers
12 understand the constitutional distinction. At least in my
13 case, it's better if they're not faculty.

14 You don't want faculty making this decision, but
15 you have people who know the difference between speech and
16 conduct, it goes through them first. That group instantly
17 dismisses anything based solely on the content of ideas,
18 content of speech, and only allows complaints to go forward if
19 they find that there is some conduct that could violate policy.
20 That changes the location of decision-making. It's another way
21 of changing incentives.

22 So my suggestion is that if you want to make the
23 commitments realistic, then you just simply don't just call
24 people names and don't say we're in a ideal- -- ideological
25 struggle. The issue is usually incentive structure, people do

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1 what they're incentivized to do. You don't want to hope for A
2 and pay for B. Change the incentives and things should work
3 out.

4 MODERATOR: Thank you.

5 Richard, I was, like, hoping to get your
6 reaction because, obviously, your suggestion was quite more
7 extreme than many of the other practical solutions that your
8 fellow panelists sort of made. So what makes you pes- -- I'm
9 assuming you're pessimistic about the potential for success
10 with some of these strategies, so what's your reaction?

11 MR. LOWERY: So I think they're -- the
12 strategies themselves are good. What I do not see is any hope
13 of actually getting them implemented, because there's nobody
14 who actually wants to do that who has the power to do it. I
15 mean, maybe the alumni do, but the alumni get ignored because
16 it's not all of them and their money can be replaced with money
17 from more DEI focused -- you know, there's way more money on
18 the other side than on our side, so your -- your alumni are not
19 going to be able to force to do it. The board, not going to do
20 anything. So I don't know how you get to the point where these
21 incentives are changed.

22 So -- and I -- and I think we've run the risk of
23 telling ourselves stories about how things are that are how --
24 kind of how we want them to be, like, if we reach out to the
25 people, you know, we -- we can convince people. And I -- I

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1 just don't see empirical evidence of that. It doesn't -- you
2 know, Chicago is sort of a holdout, but I don't see a lot of
3 indication that we can actually get these things through at
4 private schools.

5 MODERATOR: Anybody else wants...

6 MR. ROSE: Yeah. At least in my case, that's
7 not -- a hundred schools have adopted the Chicago principles,
8 they must have done -- they did that voluntarily.

9 MR. LOWERY: Right. But they can -- you -- you
10 can write anything down you want.

11 MR. ROSE: Right.

12 MR. LOWERY: You can carve that into a lake for
13 all the good it does --

14 MR. ROSE: O- -- okay.

15 MR. LOWERY: -- but you're not enforcing it.

16 MR. ROSE: So then that means you could also get
17 them to adopt safe harbor provisions. What I propose is to
18 make the commitment self-enforcing. You can't -- you can't
19 make people do things that they don't believe in. It's
20 self-enforcing. It -- the individual whose speech is being
21 attacked can sue the university. And the universities are
22 afraid of lawsuit.

23 MR. LOWERY: Right. But --

24 MR. ROSE: It's a way of making it
25 self-enforcing rather than trying to make people do something

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1 different at the top level.

2 MR. LOWERY: But now you're talking about change
3 from the government.

4 MR. ROSE: No.

5 MR. LOWERY: Well, who -- who's going to make
6 the lawsuits easier?

7 MR. ROSE: FIRE. They've already made a network
8 of pro bono lawyers across the country who will take these
9 cases. There's no government. People whose speech is
10 suppressed have been given a legal avenue for complaining --
11 because you -- the problem at my school, I'm in the grievance
12 committee, the -- the people -- they just leave because it's
13 not worth it. It's -- there's no threat.

14 But if you can bring a lawsuit against the
15 university and the university's afraid of that, things can
16 change. Obviously, it can change because they -- the schools
17 adopt the Chicago principles, they can adopt this as well.

18 MR. LOWERY: Right. I mean, I'm the last person
19 who's going to say that suing universities is a bad idea, but
20 the policy change -- again, so you think the policy change
21 comes from the lawsuits not -- not a policy change
22 voluntarily --

23 MR. ROSE: Absolutely.

24 MR. LOWERY: -- and that -- that I -- you know,
25 I'm more sympathetic to that. I still don't think it'll work,

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1 but...

2 MODERATOR: Any other reactions before we, like,
3 open it up for Q&A? No? All right. Then we'll go into Q&A.
4 Please remember to, like, introduce yourself and keep your
5 questions brief.

6 UNIDENTIFIED SPEAKER: How do I turn the -- oh.

7 MODERATOR: Whoever has a microphone, that's
8 sort of the determining factor. Okay.

9 MS. WAX: Yeah. I wanted to -- I am going to
10 say something very partisan here.

11 MODERATOR: Can you please introduce yourself?

12 MS. WAX: Can you -- can you hear me?

13 MODERATOR: Yeah. Can you introduce yourself,
14 please?

15 MS. WAX: Oh, I'm Amy Wax. I'm a professor at
16 the University of Pennsylvania Law School. I'm going to say
17 something very partisan here. I think that there is potential
18 for the government to take action. I know conservatives and
19 libertarians are reluctant to push that, and I understand that
20 perfectly. But there is an effort on to get legislators
21 interested in trying to reform higher education.

22 And of course, the only legislators who are
23 interested in doing anything like that are Republicans.
24 Democrats are a total loss. Democrats are not your friend
25 here, they are not going to do anything to undermine wokeism or

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1 progressiveism or the growth of DIE bureaucracies in the
2 university. They are 100 percent behind those trends.

3 So what can legislators do, Republican
4 legislators? Well, there's lots, but I think the real model
5 here is Title VI. Title VI says that universities, private,
6 public or otherwise, that want to receive federal funds must
7 abide by certain rules. They can't discriminate on the basis
8 of race, sex, et cetera, et cetera. One could leverage
9 Title VI by imposing additional requirements, including every
10 university taking federal funds must adopt First Amendment
11 principles. Every university taking federal funds must write
12 into its faculty handbook and its rules the kind of rules that
13 Don Hasnus (phonetic) is talking about, that all complaints
14 based on speech, rather than action, shall be immediately
15 dismissed.

16 They could empower private individuals to sue.
17 Require the appointment of university officials who -- of
18 course, we don't like bureaucracy, but I think this one
19 bureaucrat we could tolerate, to oversee speech violations and
20 complaint of a justice department and enforce these rules. So
21 I could go on and on. There are a lot of measures here and,
22 you know, Professor Abbot also has alluded to some of those
23 that could be adopted if there was the power and the
24 inclination to do that.

25 MODERATOR: What's your reaction to that?

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1 MR. ABBOT: Yeah. I -- so I forgot to mention
2 one thing. At UChicago, I filed eight Title VI and Title IX
3 complaints in the last year against programs that were
4 illegally discriminating on the basis of sex or race, and the
5 univers- -- the -- I filed them to the Title IX coordinator,
6 who was not particularly receptive to these complaints. So
7 there were things like physics graduate student fellowships
8 only for women, just as an example.

9 But after a year of pressing her and emailing
10 again and again, and it went through the university counsel,
11 they admitted that seven out of the eight had to be removed and
12 they were discontinued. And so those -- those sorts of efforts
13 can be useful. And if we could add more stipulations for
14 academic freedom, I think that would make a big difference.

15 MODERATOR: Jonathan?

16 MR. BERK: I want to -- I want to go back to
17 Dorian's point because I think that that's --

18 MODERATOR: Can you also introduce yourself?

19 MR. BERK: Oh. Oh, I'm sorry, I did already.
20 Jonathan. Jonathan Berk, Professor of Finance in the Grad
21 School of Business. Because I think of all the -- of all the
22 suggestions, the only one that was made that you could put in
23 place right away is the suggestion of the class action lawsuit.
24 And my question is, I don't really understand why this hasn't
25 come up. So in the state of California, it's even stronger.

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1 There is a state law that does not allow a university or any
2 institution to discriminate the basis of race, gender and you
3 go down the list. We -- I'm not just advertising. Certainly,
4 California is for California. Berkley definitely does
5 discriminate on that basis, right? And I don't think it would
6 be that hard to prove.

7 Now, if that's true, it means that many people
8 who were denied the employment opportunities at that
9 institution, right, who you would think would have a
10 pretty big -- because getting a job at the University of
11 California is a pretty prestigious thing to get. So if you
12 don't get that job, that would be costly. And you didn't get
13 it because they violated state law, it would seem like the
14 university's very exposed. And the University of
15 California-Berkley has an enormous endowment.

16 So you would think that they would be a --
17 lawyers would say, My God, there's some money here, right? I
18 mean, I -- I mean, I get these letters from class action
19 lawsuits for nonsense, right, that the lawyers have made a lot
20 of money out of. Why has that not occurred?

21 MR. ABBOT: Yeah, so there's -- so two
22 improvements would be if you give it class action status and
23 who has standing. So right now, it has to be a person -- a
24 specific person who is discriminated against who has to do the
25 lawsuit. And so if you could somehow let the lawyers go at it

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1 like sharks, that would be better. But there is a professor
2 I'm aware of who's -- who's -- who's suing Texas A&M because of
3 some discrimination that they engaged in. And I think
4 here's -- but to answer your question directly -- sorry for
5 hemming and hawing. The real reason is, you have to be a crazy
6 person who doesn't care if you have friends to file such a
7 lawsuit.

8 And so you're immediately blacklisted.
9 Everybody -- you'll never get another job, everybody will hate
10 you and -- if you file a lawsuit on this basis. And I think
11 that's what's preventing the lawsuits.

12 MR. ROSE: I'm -- I'm going to dis- -- I'm going
13 to disagree with the premise of the question. It's not obvious
14 that universities have crossed the border, engaged in illegal
15 discrimination, and it's not an easy lawsuit to win. I know
16 from my own university, all of the materials they publish on
17 this are scrupulously and carefully written to skirt legality
18 and not cross the line.

19 You know, we're allowed to engage in affirmative
20 action and outreach. We're allowed to do all kinds of things
21 to encourage minorities to apply for jobs in the school. We
22 can't make the selection on these basis. That's what's
23 illegal. And nowhere in the years I've been there has my
24 university ever put out something that tells us to cross the
25 line and do things illegally. We may get the message. In our

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1 minds, people who believe in racial decision-making may make
2 the decision on that basis. But the -- it's extremely unlikely
3 that you'll win a lawsuit or a class action lawsuit unless
4 you've got some kind of smoking gun.

5 MR. BERK: You're right about Georgetown, and
6 it's true about Stanford because they're lawyers and they --
7 there's a huge endowment to worry about. But it's not true
8 about the University of California-Berkeley. Go and look at --
9 they have examples of correct diversity statements.

10 MR. ROSE: That's right and it's not illegal.

11 UNIDENTIFIED SPEAKER: (Inaudible) may I ask
12 a -- I have a practical question on the same thing, because
13 MIT -- I'm with the MIT Free Speech Alliance, Eric
14 (Inaudible) -- is currently having the faculty consider
15 adopting something like the Chicago principles, and I was
16 trying to persuade the -- the faculty who are doing this that
17 all the brand general statements can be dropped if they would
18 just put in they agree that MIT will be bound by the same First
19 Amendment law as state universities and they don't get it.
20 They don't get why that's more important than saying, free
21 speech is guaranteed to everyone in the world at MIT. So how
22 do you persuade engineering professors, say, that they have to
23 get down to -- to nitty-gritty with law?

24 MR. ROSE: I spent two years doing that. You
25 spend two years doing it, right? Get -- get used to explaining

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1 what the law is and what the words mean over and over and over
2 again. And then after you get it through one group and it
3 come -- it comes back wrong, you do it again. Right?

4 You could just say, We'll apply the First
5 Amendment to ourselves. That's all it takes. But they don't
6 know what the First Amendment means. The Chicago principles
7 are a way of saying, this is what the First Amendment means,
8 all you have to do is adopt them. But the le- -- it's -- it's
9 not easy. Work inside of bureaucracy or inside a university
10 bureaucracy, which is worse, figure it's going to take two
11 years. It took me from 2015 to 2017 before Georgetown adopted
12 it, and then they didn't enf- -- and I'm still working on it
13 because then they wouldn't enforce it. Just put your head down
14 and say, you know, I'm going to get this through.

15 MR. NADON: Yeah. My name is Christopher Nadon.
16 I'm currently in the process of getting fired at Claremont
17 McKenna College. And -- and -- and so my question has some
18 practical -- personal practical applications as well. Dorian
19 Abbot talked about how there's a possibility of having someone
20 with insider information who comes forward and the other cases
21 that bring forth wrongdoing. How does one, then, get around
22 the problem that then that leaves the person who provides the
23 inside information as open to being fired on the basis of
24 various kinds of violation of confidentiality, which colleges
25 are certainly quite good at putting into statute and enforcing?

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1 MR. LOWERY: I better not say anything about
2 that either.

3 MR. ABBOT: But you could -- in the abstract,
4 you could talk about.

5 MR. LOWERY: No. I'm on very --

6 MR. ROSE: You've identified -- you've
7 identified a real issue, a real problem. If you have
8 confidential information, you know the university is lying and
9 you reveal it, you're serving a cause but you've broken your
10 own nondisclosure agreement and they can go after you for that
11 and they will. That's a serious problem.

12 MR. ABBOT: Some state universities, can't you
13 get a Freedom of Information Act and, like, look at all the
14 emails people have been sending or something like that?

15 MR. ROSE: Perhaps that's a good idea.

16 MODERATOR: Who has the mic?

17 UNIDENTIFIED SPEAKER: Right here.

18 MR. KAUFMANN: Hello? Can you hear me? Yeah.
19 Er- -- Eric Kaufmann, Birkbeck College, University of London
20 political science. I'll be speaking later, so I don't want to
21 hog floor time here. Just -- I, quick, want to say that just
22 this discussion, I think, brings home Amy's point that, really,
23 we've got to get government and legislation involved because if
24 you talk about the law, I mean, like many of you, I've been
25 through these internal investigations, and what they'll do is

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1 they'll always throw your freedom of speech under the bus
2 compared to our policy in work and study, which, of course,
3 they always reference back to the legislative framework around
4 not creating a hostile environment for designated groups and
5 without specifying what takes precedent over what.

6 And of course, they're violating, actually,
7 these laws all the time. But still, without getting government
8 involved, I don't see how we can crack this nut, 'cause they're
9 always going to sort of use -- whether it's civil rights law or
10 whether it's written in the 2010 Equality Act provisions about
11 not fostering positive relationships between -- they will
12 always drag out something that will trump your free speech. So
13 I -- I think unless that is finally tuned, finely specified in
14 law, we're not going to get anywhere.

15 MODERATOR: Any reactions to the question?

16 MR. ROSE: Yeah, I'm sorry. It's -- it's not an
17 unfamiliar role for me, but I guess it's my role to be a
18 contrarian here. The last thing we want is to get the
19 government involved. What you want is to get indi- -- empower
20 individuals to enforce their rights themselves. An analogy --
21 there's a difference between legislation and civil liability.

22 You want people who are subjected to this to be
23 able to bring pressure on the university to vindicate their
24 rights as faculty members, as students. You know, the last
25 thing you want is the government making the rules. How'd we

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1 get to the position we're in now? The leg- -- you don't want
2 politicians involved in this. The problem is that these are
3 too politically motivated. What you want to do is empower
4 individuals to enforce their rights themselves, and you can do
5 that by making the policies specific enough so that you can
6 have a FIRE lawyer come in and sue for you in case your rights
7 are violated.

8 MR. NEUSS: Carl Neuss. I'm representing the
9 National Alumni Free Speech Alliance as well as Cornell Free
10 Speech Alliance. And we're very proud of a gentleman by the
11 name of Leonard Leo, who is a Cornell grad and founder of the
12 Federalist Society. In trying to get advice from him, I had a
13 very long conversation, and he listened to me for about an
14 hour, and then he had two words of advice, which picks up on
15 Richard's idea. And he said brand tarnishment.

16 And the -- what -- what -- whether you're woke
17 or whether you're on the right, I'm sure all this fa- -- all
18 faculty, irregard- of -- of what your -- your political
19 persuasion is, what's most important to you if you're at
20 Stanford is that you're a Stanford faculty member and you're
21 very extremely proud of that. You don't want that to be
22 tarnished, regardless of what side of the political spectrum
23 you're on. And so I -- I wonder what the potential there is.

24 And not that we need to tarnish the brand, but
25 we've had some success at Cornell, in particular, of pointing

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1 out that Cornell is tarnishing its own brand, the
2 administrators are tarnishing their brand. In particular,
3 Randy Wayne was very important because they -- they canceled
4 Lincoln, and they -- Cornell happens to be the owner of one
5 Linc- -- the Gettysburg Address in Lincoln's own hand and a
6 bust done of -- of Lincoln in his last days of -- of his life.

7 And they -- they -- they canceled him. And once
8 we threw a spotlight on that, a small group of people
9 associated with the faculty in our group, it was amazing how
10 fast the university capitulated. But unless someone threw a
11 spotlight on it, no one -- it would have gone unnoticed and
12 un- -- undealt with. So any comments on that strategy in terms
13 of trying to turn things around?

14 MR. ARCIDIACONO: So I think transparency's
15 really a key thing and that the more transparency you get, the
16 more you can see some of those things. You know, you've got
17 the case before the Supreme Court right now, and one of the
18 things that's hurt Harvard a lot is what's exposed in their
19 admissions processes. You know, Gorsuch just hammered on the
20 fact that it was the squash team. Over and over again, we're
21 giving free admission to the squash players.

22 Those types of things, I think -- I think
23 transparency is key to the whole operation. I think it's a --
24 a moral wrong that universities don't use their data to help
25 their students. And that if we actually vested in having

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1 universities show their data, then I think we could actually
2 make a lot of great progress. And some of these debates that
3 we're having about DEI and such, they actually have
4 implications for the empirics where we should evaluate it.

5 So -- and my son's a -- a sophomore at Notre
6 Dame now and -- and part of his first year experience, he had
7 to read something by Robin DiAngelo with no counter. And that
8 really bothered me, and -- but the -- the thing about it is, is
9 I may think that Robin DiAngelo's work is toxic, but I'd be
10 perfectly okay if you did a randomized thing where we're going
11 to give half the people stuff from FAIR and half the people
12 Robin DiAngelo and then evaluate.

13 But I think what we really need to be pushing
14 for -- and part of the practical solution I forgot to mention
15 is pushing universities to be transparent to say, Look, I want
16 empathy across, you know, I want to solve racial issues, I
17 disagree with your solutions. Give me the data so we can
18 actually evaluate what works. And I think that through that,
19 you know, that's a roundabout way of getting to the -- the --
20 the talk- -- the -- the branding issue. I think a lot gets
21 exposed.

22 MR. LOWERY: Can I -- could I jump -- so I mean,
23 I'm -- I'm obviously very much in line with the idea of brand
24 tarnishing, but I think there's a fundamental difference of
25 opinion between, sort of, what my approach is and what --

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1 what -- that is getting in the i- -- the -- I think the idea
2 there is, Oh, we'll tarnish their brand and they'll respond and
3 fix things and things will get better, my argument would be, if
4 you really dig down and you look at this -- and I've spent many
5 years looking at this -- there's not stuff under the hood worth
6 salvaging.

7 Like, we're not going to fix univer- -- if you
8 look at the personnel, you look at how people have behaved over
9 the past 30, 40, years, it's not the right set of people to be
10 doing this job. We just -- it's not -- we need to tarnish the
11 brand to where we replace it with something else, not, like,
12 course correct a little bit. We've got totally the wrong
13 people, we've got totally the wrong institutions. We just need
14 to go in that direction, I think.

15 MODERATOR: All right. I think we have, like,
16 time for two more questions, so --

17 UNIDENTIFIED SPEAKER: All right.

18 MODERATOR: -- and the gentleman at the center
19 table had his hand up from the very beginning, so if you can
20 make sure...

21 MR. CARVALHO: So Carlos Carvalho from the Salem
22 Center, the University of Texas. I just had a question on the
23 legislation side and then -- I'm sorry -- on the litigation
24 side, where, sure, we can sue universities (inaudible) in
25 violation of First -- the First Amendments rights are -- are --

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1 are -- take -- take place and they take place all the time and
2 there's some -- some lawsuits coming out (inaudible) on that.
3 But my understanding -- and I'm married to an attorney so I --
4 I -- you know, talk a lot about that with her -- is that the
5 punitive damages for the university are very low on this. It's
6 like a slap on the wrist is my dean apologizing for violating
7 my First Amendment rights.

8 And that's -- they sit on billions of dollars of
9 endowment, so they're not afraid of that. It's like, Oh, sure,
10 yeah, sue me. It's going to be costing us time, money,
11 prestige. My colleagues won't talk to me, whatever, right, if
12 I go and engage in that lawsuit. And, yeah, the punishment is,
13 like, literally a slap on the wrist. There's not -- nobody's
14 going to give you money to pay for -- is that correct? Is
15 that -- do you see a different route where you actually get
16 some actual punishment to universities?

17 MR. ROSE: You're entirely correct. These
18 lawsuits wouldn't produce large punitive (inaudible). It's
19 possible you can get a case where it would, but they typically
20 wouldn't produce large punitive damages award. They may only
21 have very moderate compensatory damage awards, although in some
22 cases the defamation effect on the person's character, a
23 professor's character could be significant.

24 But you don't need some massive punitive damage
25 award in one case for this to have an effect, because if all of

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1 the universities have these policies in place, and every time
2 somebody is punished for speech, there's a law- -- university
3 counsel's not about winning. It's about preventing lawsuits.
4 Even if they're a couple -- \$10,000 a shot, you get the
5 deterrent effect where the university -- my counsel's always
6 talking to us about how we can't do this, not because it's
7 wrong, but because somebody might sue us.

8 What you want is university counsel to be the
9 party motivated to change the internal structures and
10 incentives so that people don't -- you know, deans don't feel
11 like it's okay to punish speech just to mollify the students.
12 And over time, gradually, you can make a difference this way.
13 You don't need big damages award, you just need the suit
14 brought and to be something. You can't do that now because of
15 litigation costs, but Fire's solving that problem for us by
16 providing lawyers at no cost.

17 It's a step-by-step gradual thing. It can work.
18 I don't have any magic bullet that does it tomorrow. Let's
19 just change the incentives.

20 MODERATOR: Anybody else want to react to that?

21 UNIDENTIFIED SPEAKER: Quick comment.

22 MODERATOR: All right. Then, yeah.

23 MR. ETCHEMENDY: My name is John Etchemendy.
24 I'm a -- a -- a professor here in philosophy. I'm -- I was the
25 provost for a while. And I -- I just want to act as a

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1 megaphone to John, I agree with everything you said -- you've
2 said, John. And -- and --

3 MR. ROSE: That never happens.

4 MR. ETCHEMENDY: Especially with philosophers.
5 The important thing that I think people may be missing is that
6 if you can get that sentence that he read off into the faculty
7 handbook, that is the employment contract. At that point, you
8 no longer have to worry about a class action suit or who is --
9 you know, who's going to have the -- the guts to -- to file a
10 class action suit. Then it becomes an individual suit if -- if
11 the university violates that and does not follow that -- that
12 sentence, then the individual who has been wronged can sue.
13 And -- and -- and that will happen.

14 So I -- I think it's -- that is the most
15 brilliant strategy I've heard in a long time. Now, signing on
16 to these statements, the Chicago statement, I -- I think that's
17 wonderful, but that is not going to be enforceable. So -- so I
18 think that, you know, I -- I would very much like to see more
19 people appreciate the -- the importance of enforceability.

20 Oh, and by the way -- so Richard, I disagree
21 with just about everything you said. But in particular, who
22 runs the university? It is the faculty. It really is the
23 faculty. The faculty power -- the faculty have the power to
24 get a president fired. It's not the board, not at all the
25 board. I mean, you're -- you're absolutely right about the

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1 board. They're -- they don't know what they're -- what they're
2 doing. But the faculty run the university and if we can get
3 the faculty to push for something like that change in the
4 faculty handbook, we could actually get something done. The
5 problem -- now getting back to Amy's point, the problem is that
6 our faculties tend to be very, very liberal and -- and very
7 much have bought into, you know, the DEI agenda. So -- so I
8 don't know if that's going to happen. I -- but I -- I do think
9 that that strategy is exactly the right way to go.

10 MR. ROSE: I have that before our faculty senate
11 right now at Georgetown.

12 MODERATOR: All right. Well, please join me in
13 thanking the panelists.

14 (End of recording.)
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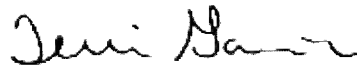
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